An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-3

Filed: 6 October 2020

Durham County, No. 18 CVS 2300

GUILFORD ARCHIE, III, Plaintiff,

v.

EZEKIEL JENNETTE, and WILLIAM L. JENNETTE, Defendants.

Appeal by defendant from order entered 9 September 2019 by Judge Andrew Heath in Durham County Superior Court. Heard in Court of Appeals 12 August 2020.

*M. Howard Law Office, by Marlon J. Howard, Esq., LL.M., for plaintiff-appellee.*

*Waters Law, PLLC, by Dena White Waters, for defendant-appellant Ezekiel Jennette.*

DIETZ, Judge.

Ezekiel Jennette appeals the trial court's order denying relief from a default judgment entered against him. Jennette's brief asserts that this appeal is from a final judgment. It is not. There are claims still pending against Jennette's father and thus the order is an interlocutory one leaving more to be done by the trial court. Because the challenged order is not a final judgment and Jennette has not met his burden to

show that the order affects a substantial right, we dismiss this appeal for lack of appellate jurisdiction.

## Facts and Procedural History

Guilford Archie alleges that Ezekiel Jennette hit him with a car at a high school campus in Durham. Archie brought negligence claims against both Jennette and Jennette's father, William Jennette. The complaint asserts a negligence claim against Jennette for hitting and injuring Archie with the car. The complaint also asserts two additional claims against Jennette's father, one for vicarious liability for Jennette's negligence and a separate claim for negligent entrustment.

The trial court entered a default judgment against Ezekiel Jennette for failure to timely respond to the complaint. The court later denied Jennette's motion for relief from that judgment. Jennette timely appealed the trial court's order denying relief from the default judgment.

## Analysis

We begin our analysis by examining our jurisdiction to hear this appeal. In the statement of the grounds for appellate review, Jennette asserts that the challenged order "is a final judgment, and appeal therefore lies to the Court of Appeals pursuant to N.C. Gen. Stat. § 7A-27(b)."

"A judgment is either interlocutory or the final determination of the rights of the parties." N.C. R. Civ. P. 54(a). A "final judgment" is one that disposes of the entire

action and “leaves nothing further to be done in the trial court.” *Denney v. Wardson Constr., Inc.*, 264 N.C. App. 15, 17, 824 S.E.2d 436, 438 (2019). By contrast, a judgment “which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties” is not a final judgment. N.C. R. Civ. P. 54(b).

This appeal is not from a final judgment. The record on appeal contains no order disposing of the claims against Jennette’s father, William Jennette. Thus, the challenged order adjudicated fewer than all claims against fewer than all parties in the action and left more to be done in the trial court. It is an interlocutory order, not a final judgment.

As a result, we must dismiss this appeal for lack of appellate jurisdiction. Our jurisdiction over interlocutory appeals is contingent on the appellant demonstrating in the statement of the grounds for appellate review that the challenged order affects a substantial right. As we have held, “the *only way* an appellant may establish appellate jurisdiction in an interlocutory case (absent Rule 54(b) certification) is by showing grounds for appellate review based on the order affecting a substantial right.” *Larsen v. Black Diamond French Truffles, Inc.*, 241 N.C. App. 74, 77–78, 772 S.E.2d 93, 96 (2015).

Because Jennette wrongly asserted that this appeal is from a final judgment, and provided no explanation of why the challenged order affects a substantial right, we are deprived of jurisdiction to hear this appeal. *Id.* As we have held in dismissing

many past cases in this same situation, it is “not the duty of this Court to construct arguments for or find support for appellant’s right to appeal from an interlocutory order; instead, the appellant has the burden of showing this Court that the order deprives the appellant of a substantial right which would be jeopardized absent a review prior to a final determination on the merits.” *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994). When an appellant fails to make that showing, our only recourse is to dismiss the appeal for lack of appellate jurisdiction. *Id.*

DISMISSED.

Judges BERGER and ARROWOOD concur.

Report per Rule 30(e).